

**FILED**

**MAR 14 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

BHAGWANT SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-74478

Agency No. A79-569-520

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Bhagwant Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") decision summarily affirming the Immigration Judge's ("IJ") denial of his applications for asylum and withholding

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of removal, and request for relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence an adverse credibility finding and will uphold the IJ’s decision unless the evidence compels a contrary conclusion. *Malhi v. INS*, 336 F.3d 989, 992-93 (9th Cir. 2003). We deny the petition for review.

Singh failed to petition for review of the BIA's affirmance of the IJ's discretionary denial of asylum and thus waived the issue. *See Singh v. Ashcroft*, 361 F.3d 1152, 1157 n.3 (9th Cir. 2004) (stating that “[i]ssues not raised in an appellant's opening brief are typically deemed waived”).

Substantial evidence supports the IJ’s adverse credibility determination in regard to Singh’s remaining claims. Singh’s testimony was internally inconsistent and inconsistent with his asylum application concerning several details that went to the heart of his claims, including whether a gun fight took place in his store prior to his first arrest, and whether he was released from the police station after his first arrest on the condition that he find information on Jagvinder Singh’s whereabouts. *See Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004). Furthermore, Singh’s testimony that he was beaten on his back and buttocks is undermined by Tej Singh’s affidavit, which states that he saw injuries to Singh’s face and arms after he returned from his first arrest. *See Pal v. INS*, 204 F.3d 935, 938 (9th Cir.

2000) (holding that documents submitted by petitioner which contradict petitioner's testimony may form the basis for an adverse credibility finding).

Because Singh's claim under the CAT is based on the same testimony that the IJ found not credible, and he points to no other evidence that he could claim the IJ should have considered in making its determination under CAT, his CAT claim also fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

**PETITION FOR REVIEW DENIED.**